MEMORIAL

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ON ACCOUNT OF

The late Rebellion,

EDINBURGH

Re-printed *Anno Dom.* 1716.

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MEMORIAL

HAVING the Honour to be employed in His Majesty's Service in *Scotland*, and to serve for that Country in Parliament, I presume, with great Submission, to offer a few Observations, concerning the State of the Prisoners, on Account of the late *Rebellion*, whose being in very different Cases, seems to require different Resolutions. I offer these Observations, the rather, because there is not in all the Classes after mentioned, nor indeed was there in the *Rebellion*, any Person with whom I am nearly concerned; as Blood Relation, or by any Alliance or Tye.

First, Its certain, that the *Rebellion* breaking out of a Sudden; when there was no Army in the Country: The People on the *North* Side of *Tay*, were soon under the Feet of the *Rebels*, and many were forced not only to Submit to them as a *Government*; But in many Places many who had not at any Time before shown the least

Marks of Diſſafection, were directly forced into their Service, and were dragged to the *Rebels* Army, from their Houſes and Families, and even from the Churches, where His Majeſty was publickly Prayed for.

Some of theſe unfortunate People, as well Gentlemen as Commons, took the firſt Opportunity to *Deſert*, and Surrender themſelves, or were taken in their Return Home, Others not having Courage enough to incur the Hazard of being treated as *Deſerters* by the Enemies, and as *Enemys* by the *KING's Troops*, were carried along in the *Rebellion*, till they were taken at *Dumblane* and *Preſton*. But the original Motive of coming into the Rebellion, being the fear of a Force, they were unable to reſiſt, and which continued to the Time of their Deſerting, or being Taken; They ſeem to be proper Objects of *Royal Clemency*; But more eſpecialy the Caſe of theſe that Deſerted, is to be Pitied, who have been expoſed to the Hatred and Neglect of the *Rebels*, and to Puniſhment at the Hands of the Government, And it's evident, that the Caſe of the common People who have ſtood out to the End of the Rebellion, is more Criminial: And yet ſuch are allowed upon the Delivery up of their Arms, to enjoy their Liberty, and purſue their private Callings; But the common People who have been taken at *Preſton*

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and *Dumblain*, are keept under miſerable Impriſonment, untill they are glad to beg to be ſent into Baniſhment; without Deſtinction of thoſe who have been forced, from thoſe that have not been Forced into that wicked Service.

A ſecond *Claſs*, which deſerves to be diſtinguiſhed from the reſt, is that of Boys under Age, from 14 to 21, who have been engaged from the Misfortune of their *Education*, the Situation of their *Eſtates*, or the Errors of their near Relations, before they came to that Maturity of *Judgment*, which the Law requires to make good their *Obligation* or *Covenants* in Civil Caſes. It's true, that in Matters Criminal, the Law has not the ſame Indulgence for the weakneſs of none Age, and if ſuch as are under Age, could be convicted of any Facts atrocious, their Puniſhments would be leſs regrated; But where thoſe who are under Age have been engaged by the *Raſhneſs of Youth*, or Errors of Education, into a Crime, that became too commom in the Place, where they lived; It may perchance ſeem hard to Subject them unto the Severity of the Law tho' it may be uſefull, to take ſome Surety for their future good Behaviour.

A Third *Claſs*, is, that of Children in Family with their Parents, who went out with their Fathers into the *Rebellion*, and menial

Servants who followed their Masters. As to whom the Maxim in the *Roman* Law, appears to be full of Humanity, *Welle non creditur qui obsequitur Imperio Patris vell Domini*: And tho' that Maxime in it's full Extent, does chiefly concern private Transactions, it affords some Abatement from Guilt, in Cases Criminal, and presents such Offenders to the *Royal Clemency*, in a more favourable Case.

A Fourth *Class*, may be of those who having hastily joined the *Rebels*, did leave them when the *Rebellion* was yet subsisting, and these are in different Cases, some of them were not present at any Act of *Violence* or *Blood-shed*, their Crime consists precisely in having joined the *Rebels* in Arms, and having been present at proclaiming the *Pretender*, and of these many, especially such as were upon the South-side of *Forth*, having easy Access to do it, came in and submitted themselves to the *Government*, others did continue longer with the Rebels, but deserted them, and lurked or returned to their own Houses, whilst the *Rebellion* was a foot, without making Terms for themselves, and when the Rebels flatered themselves with no despicable Hopes: All these in my Opinion seem less Crimina', than those who stood out to the last, and may be separated and distinguished from them. When all the Persons that fall within

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theſe Claſſes are ſeparated from the reſt, there will remain a very great Number in the common Caſe.

Where theſe different Facts are atteſted by probable Evidence: It is humbly ſubmitted, if it may not be for his Majeſty's Service, that of his Proper Motion, and Royal Goodneſs, Perſons in theſe different Caſes, ſhould be ſeparated from the reſt, and have Clemency ſhown them. The Crys of theſe People whoſe Caſes are not unknown, pierce the Hearts of his Majeſty's moſt Faithfull Subjects with Pity, and the Summer Seaſon coming on their Continuance in Priſon will be more terrible than Death it ſelf, to the People who ſuffer: And tho' Baniſhment will be a ſmall temporal Eaſe to the Sufferers, yet it will be no Comfort to their afflicted Families, nor Satisfaction to the Minds of many Faithful Subjects, whoſe Compaſſions are moved from being conſcious to their Circumſtances. On the other Hand, the Bounty of the Government diſpenſed of proper Motions, without being deſired or requeſted, would ſoften the Minds of the diſaffected, and increaſe the Zeal of the Loyal Subjects

There is another Point, which appears to be of very great Conſequence, and that is, Three or Four Hundred Noblemen and Gentlemen of Birth and Intereſt in the Coun-

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try, being chaſed to the Hills and Iſlands, and ready to eſcape to France, or ſome other Catholick Country: It may afford ſuch as are Enemies to his Majeſty and the Reformed Religion, an Opportunity to form Bodies of Britiſh Subjects, as they have ſome Time ſince done of Iriſh, which by Reaſon of the great Intereſt and Influence, which theſe People will have for many Generations in the Country, where they have been Born, will be Recruited and keeped up full. To which the ſending of ſo many People to the Plantations, or unto Baniſhment, who may eaſily eſcape from thence, may poſſibly not a little contribute.

And this with Submiſſion in my humble Opinion might be prevented, by giving Power to Treat with ſuch of theſe People, as ſhall come in by a Time Limited, with Promiſe of Security for their Lives, on Condition of Confinement, or Bail for their good Behaviour, where the Perſons are of that Condition, as to deſerve ſo much Notice, which Confinement or Securities may be continued for a certain Number of Years, or ſo much longer as the King ſhall ſee cauſe, and ſuch Qualities may be alſo added, in the Caſe of Papiſts being in the Rebellion, as may ſecure the Succeſſion of their Eſtates to Proteſtants. As to their Eſtates that leads to a Conſideration of greater

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Extent, concerning which, I presume to offer my Opinion in a few Words.

Its neither agreeable to the Disposition of the Government nor will it indeed be for his Majesty's Interest and Service, to take the Lives of all who have Forfeited them in the Rebellion, tho' it is very just, that some Examples should be made to the Terror of others to commit the like in Time coming, and if great Numbers of Men of Birth and Interest, shall be turned a Drift as Beggars, the Life that is spared in Mercy, will become a Burden to them, and their Relations.

The Universal Forfeiture of Estates will produce nothing material to the Publick, for the Commission of Euquiry which in that Case will be necessary, and must continue some Years, will be an Expence on the Goverment, and besides the Fees of Stewarts, and Sequestrations with the Interests of Debts and Burthens, will in that Time go near to exhaust the Value of the Estates Forfeited, which no Care or Penetration of the Commissioners of Enquiry can prevent. without the Assistance of the Offenders themselves, seeing the Titles to Estates will be suppress'd and carried away, Debts extinguished in whole or in part will be revived and false ones made up whereof there is one known Instance in the Case of the

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Family of *Douglass*, who having got the Gift of the Viscount of *Dundees* Forfeiture in the Year 92, have never been able to make any thing of it, tho' very considerable Sums have been bestowed in Prosecuting that Right, and that because the Titles were suppressed and the Instructions of the Payment of Debts, in the Hands of the Rebels and his Friends, and could never be Recovered.

Besides this Way of Sequestration will put a Stop to the Payment of Interest of Debts, due to Lawful Creditors, and Extend the Calamity of the Forfaultures, much beyond the Case of the Criminals, and in Proportion encrease the Crys of the People, and Interest them in their Sufferings. The vesting of the Commissioners with Judiciary Powers, would break in upon the settled Judicatories, contrary to the 9th Article of the Treaty of Union, and extreamly disquiet those who depend upon the ordinary Courts, a kind of Men who in all Countrys have no small Influence upon the body of the People.

To all these Considerations, it may be added, that many of the Estates of the Rebels, and these of the most considerable are secured by Intails Contracts of Marriage, and the Estates of a great Part of the Vassals that will fall under Forfeiture, must accrue to great Families, in virtue of the late

late Act of Parliament: So that the very Subject of these Forfeitures will not be by much so considerable as is imagin'd: and on the whole Matter the Publick will have nothing but Expence and Murmuring, the Tenants and Creditors will be ruined, the Nation Mov'd with Compassion and Crys of the Miserable, whilst no Body shall profit but a few Commissioners, and these employed by them in the Management of sequestrat Estates. For preventing of which Mischiefs, with great Submission I humbly propose, that a Clause may be brought into the Attainder Bill in the House, or into the Inquiry Bill, to this Effect.

That whereas his Majesty was graciously pleased to declare, that he would freely give up all the Estates, that should become forfeited to the Crown by the *Rebellion*, to be applyed towards the defraying the extraordinary Expence incurred on that Occasion: and whereas it may appear to be for his Majesty's Service, and the Settlement and Quiet of the Kingdom, to grant his Royal Pardon and Grace to such Offenders, as he shall in his Royal Wisdom think fit; *Be it therefore enacted, &c.* And the saids Commissioners (shall have Power to compound with such of the Rebels, or their Heirs, to whom His Majesty shall extend His gracious Pardon for their Estates, and

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under such Conditions, as His Majesty shall direct no Composition being under a Sum equal, to Years free Rent, or Income of the Estates, which did belong to any such Offenders, after Deduction of Annual Burdens, and Interest of Sums due to any lawful Creditors.

By this Means the *Royal Prerogative* will be preserved, to be exercised under the best Prince that ever filled a Throne, for the Quiet and Tranquility of his People, His Royal Promise at the opening of this Meeting of Parliament, will be made effectual in the easiest and best Manner, and the Proprietors being to have an Advantage, will come in and discover the Value of their Estates, and owing their Mercy to the Kings own Bounty, will be ty'd to Him in the strikest Rules of Gratitude.

FINIS.